

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING ACT

Part 1 - Division Administration

58-1-101. Short title.

This chapter is known as the "Division of Occupational and Professional Licensing Act."

58-1-102. Definitions.

For purpose of this title:

- (1) "Department" means the Department of Commerce.
- (2) "Director" means the director of the Division of Occupational and Professional Licensing.
- (3) "Division" means the Division of Occupational and Professional Licensing created in Section 58-1-103.
- (4) "Executive director" means the executive director of the Department of Commerce.
- (5) "Licensee" includes any holder of a license, certificate, registration, permit, student card or apprentice card authorized under this title.
- (6) "Unlawful conduct" has the meaning given in Subsection 58-1-501(1).
- (7) "Unprofessional conduct" has the meaning given in Subsection 58-1-501(2).

58-1-103. Division created to administer licensing laws.

There is created within the Department of Commerce the Division of Occupational and Professional Licensing. The division shall administer and enforce all licensing laws of Title 58.

58-1-104. Director of division - Appointment - Duties.

- (1) The division shall be under the supervision, direction and control of a director. The director shall be appointed by the executive director with the approval of the governor. The director shall hold office at the pleasure of the governor.
- (2) The director shall perform all duties, functions and responsibilities assigned to the division by law or rule and, where provided, with the collaboration and assistance of the boards established under this title.

58-1-105. Employment of staff.

The director, with the approval of the executive director, may employ necessary staff, including specialists and professionals, to assist him in performing the duties, functions and responsibilities of the division.

58-1-106. Division - Duties, functions, and responsibilities.

The duties, functions and responsibilities of the division include the following:

- (1) prescribing, adopting and enforcing rules to administer this title;
- (2) investigating the activities of any person whose occupation or profession is regulated or governed by the laws and rules administered and enforced by the division;
- (3) subpoenaing witnesses, taking evidence, and requiring by subpoena duces tecum the production of any books, papers, documents, records, contracts,

- recordings, tapes, correspondence, or information relevant to an investigation upon a finding of sufficient need by the director or his designee;
- (4) taking administrative and judicial action against persons in violation of the laws and rules administered and enforced by the division, including the issuance of cease and desist orders;
 - (5) seeking injunctions and temporary restraining orders to restrain unauthorized activity;
 - (6) giving public notice of board meetings;
 - (7) keeping records of board meetings, proceedings and actions and making those records available for public inspection upon request;
 - (8) issuing, refusing to issue, revoking, suspending, renewing, refusing to renew or otherwise acting upon any license;
 - (9) preparing and submitting to the governor and the Legislature an annual report of the division's operations, activities and goals;
 - (10) preparing and submitting to the executive director a budget of the expenses for the division;
 - (11) establishing the time and place for the administration of examinations; and
 - (12) preparing lists of licensees and making these lists available to the public at cost upon request unless otherwise prohibited by state or federal law.

58-1-107. Applicability - Relationship to specific chapters under title.

The provisions of this chapter uniformly apply to the administration and enforcement of this title. However, unless expressly prohibited in this chapter, any provision of this chapter may be supplemented or altered by specific chapters of this title.

58-1-108. Adjudicative proceedings.

- (1) The division and all boards created under the authority of this title shall comply with the procedures and requirements of Title 13, Chapter 1, Department of Commerce, and Title 63, Chapter 46b, Administrative Procedures Act, in all of their adjudicative proceedings as defined by Subsection 63-46b-2(1).
- (2) Before proceeding under Section 63-46b-20, the division shall review the proposed action with a committee of no less than three licensees appointed by the chairman of the licensing board created under this title for the profession of the person against whom the action is proposed.
- (3) Notwithstanding Title 63, Chapter 46b, Administrative Procedures Act, a warning or final disposition letter, which does not constitute disciplinary action against the addressee, issued in response to a complaint of unprofessional or unlawful conduct under this title, does not constitute an adjudicative proceeding.

58-1-109. Presiding officers - Content of orders - Recommended orders - Final orders - Appeals of orders.

- (1) Unless otherwise specified by statute or rule, the presiding officer for adjudicative proceedings before the division shall be the director. However, pursuant to Title 63, Chapter 46b, Administrative Procedures Act, the director may designate in writing an individual or body of individuals to act as presiding officer to conduct or to assist the director in conducting any part or all of an adjudicative proceeding.
- (2) Unless otherwise specified by the director, an administrative law judge shall be designated as the presiding officer to conduct formal adjudicative proceedings in accordance with Subsection 63-46b-1(4), Sections 63-46b-6 through 63-46b-9, and 63-46b-11.

- (3) Unless otherwise specified by the director, the licensing board of the occupation or profession that is the subject of the proceedings shall be designated as the presiding officer to serve as fact finder at the evidentiary hearing in a formal adjudicative proceeding.
- (4) At the close of an evidentiary hearing in an adjudicative proceeding, unless otherwise specified by the director, the presiding officer who served as the fact finder at the hearing shall issue a recommended order based upon the record developed at the hearing determining all issues pending before the division.
- (5)
 - (a) The director shall issue a final order affirming the recommended order or modifying or rejecting all of any part of the recommended order and entering new findings of fact, conclusions of law, statement of reasons, and order based upon the director's personal attendance at the hearing or a review of the record developed at the hearing. Before modifying or rejecting a recommended order, the director shall consult with the presiding officer who issued the recommended order.
 - (b) If the director issues a final order modifying or rejecting a recommended order, the licensing board of the occupation or profession that is the subject of the proceeding may, by a two-thirds majority vote of all board members, petition the executive director or designee within the department to review the director's final order. The executive director's decision shall become the final order of the division. This subsection does not limit the right of the parties to appeal the director's final order by filing a request for agency review under Subsection (8).
- (6) If the director is unable for any reason to rule upon a recommended order of a presiding officer, the director may designate another person within the division to issue a final order.
- (7) If the director or his designee does not issue a final order within 20 calendar days after the date of the recommended order of the presiding officer, the recommended order becomes the final order of the director or his designee.
- (8) The final order of the director may be appealed by filing a request for agency review with the executive director or his designee within the department.
- (9) The content of all orders shall comply with the requirements of Subsection 63-46b-5(1)(i) and Sections 63-46b-10 and 63-46b-11.

Part 2 - Boards

58-1-201. Boards - Appointment - Membership - Terms - Vacancies - Quorum - Per diem and expenses - Chairman - Financial interest or faculty position in professional school teaching continuing education prohibited.

- (1)
 - (a) The executive director shall appoint the members of the boards established under this title. In appointing these members the executive director shall give consideration to recommendations by members of the respective occupations and professions and by their organizations.
 - (b) Each board shall be composed of five members, four of whom shall be licensed or certified practitioners in good standing of the occupation or profession the board represents, and one of whom shall be a member of the general public, unless otherwise provided under the specific licensing chapter.
 - (c) The names of all persons appointed to boards shall be submitted to the governor for confirmation or rejection. If an appointee is rejected by the governor, the executive director shall appoint another person in the same manner as set forth in Subsection (a).

- (2) (a) Except as required by Subsection (b), as terms of current board members expire, the executive director shall appoint each new member or reappointed member to a four-year term.
- (b) Notwithstanding the requirements of Subsection (a), the executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.
- (c) A board member may not serve more than two consecutive terms, and a board member who ceases to serve on a board may not serve again on that board until after the expiration of a two-year period beginning from that cessation of service.
- (d) (i) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
- (ii) After filling that term, the replacement member may be appointed for only one additional full term.
- (e) If a board member fails or refuses to fulfill the responsibilities and duties of a board member, including the attendance at board meetings, the executive director with the approval of the board may remove the board member and replace the member in accordance with this section.
- (3) A majority of the board members constitutes a quorum. A quorum is sufficient authority for the board to act.
- (4) (a) (i) Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.
- (ii) Members may decline to receive per diem and expenses for their service.
- (b) (i) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the board at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.
- (ii) State government officer and employee members may decline to receive per diem and expenses for their service.
- (5) Each board shall annually designate one of its members to serve as chair for a one-year period.
- (6) A board member may not be a member of the faculty of or have any financial interest in any vocational or professional college or school which provides continuing education to any licensee if that continuing education is required by statute or rule.

58-1-202. Boards - Duties, functions, and responsibilities.

The duties, functions and responsibilities of each board include the following:

- (1) recommending to the director appropriate rules;
- (2) recommending to the director policy and budgetary matters;
- (3) approving and establishing a passing score for applicant examinations;
- (4) screening applicants and recommending licensing, renewal, reinstatement and relicensure actions to the director in writing;
- (5) assisting the director in establishing standards of supervision for students or persons in training to become qualified to obtain a license in the occupation or profession it represents; and
- (6) acting as presiding officer in conducting hearings associated with adjudicative proceedings and in issuing recommended orders when so designated by the director.

58-1-203. Duties, functions, and responsibilities of division in collaboration with board.

The following duties, functions and responsibilities of the division shall be performed by the division with the collaboration and assistance of the appropriate board:

- (1) defining which schools, colleges, universities, departments of universities or other institutions of learning are reputable and in good standing with the division;
- (2) prescribing license qualifications;
- (3) prescribing rules governing applications for licenses;
- (4) providing for a fair and impartial method of examination of applicants;
- (5) defining unprofessional conduct, by rule, to supplement the definitions under this chapter or other licensing chapters;
- (6) establishing advisory peer committees to the board and prescribing their scope of authority; and
- (7) establishing conditions for reinstatement and renewal of licenses.

Part 3 - Licensing

58-1-301. License application - Licensing procedure.

- (1) (a) Each license applicant shall apply to the division in writing upon forms available from the division. Each completed application shall contain documentation of the particular qualifications required of the applicant, shall include the applicant's social security number, shall be verified by the applicant and shall be accompanied by the appropriate fees.
(b) An applicant's social security number is a private record under Subsection 63-2-302(1)(a)(vii).
- (2) (a) A license shall be issued to an applicant who submits a complete application if the division determines that the applicant meets the qualifications of licensure.
(b) A written notice of additional proceedings shall be provided to an applicant who submits a complete application, but who has been, is, or will be placed under investigation by the division for conduct directly bearing upon his qualifications for licensure, if the outcome of additional proceedings is required to determine the division's response to the application.
(c) A written notice of denial of licensure shall be provided to an applicant who submits a complete application if the division determines that the applicant does not meet the qualifications of licensure.
(d) A written notice of incomplete application and conditional denial of licensure shall be provided to an applicant who submits an incomplete application. This notice shall advise the applicant that the application is incomplete and that the application is denied, unless the applicant corrects the deficiencies within the time period specified in the notice and otherwise meets all qualifications for licensure.
- (3) Before any person is issued a license under this title, all requirements for that license as established under this title and by rule shall be met.
- (4) If all requirements are met for the specific license, the division shall issue the license.

58-1-302. License by endorsement.

The division may issue a license without examination to a person who has been licensed in any state, district or territory of the United States or in any foreign country, whose education, experience and examination requirements are, or were at the time the license was issued, equal to those of this state. Before any person may be issued a license under this section, he shall produce satisfactory evidence of his qualifications, identity, and good standing in his occupation or profession.

58-1-303. Temporary license.

- (1) (a) The division may issue a temporary license to a person who has met all license requirements except the passing of an examination. In this case:
 - (i) the licensee shall take the next available examination; and
 - (ii) the temporary license automatically expires upon release of official examination results if the applicant fails the examination.
- (b) The division may issue a temporary license to a person licensed in another state or country who is in Utah temporarily to teach or assist a Utah resident licensed to practice an occupation or profession under this title.
- (c) The division may issue a temporary license to a person licensed in another state who met the requirements for licensure in that state, which were equal to or greater than the requirements for licensure of this state at the time the license was obtained in the other state, upon a finding by the division, in collaboration with the appropriate board, that the issuance of a temporary license is necessary to or justified by:
 - (i) a local or national emergency or any governmental action causing an unusual circumstance that might be reasonably considered to materially jeopardize the public health, safety, or welfare if a temporary license is not issued;
 - (ii) a lack of necessary available services in any community or area of the state from an occupation or profession licensed under this title, if the lack of services might be reasonably considered to materially jeopardize the public health, safety, or welfare if a temporary license is not issued; or
 - (iii) a need to first observe an applicant for licensure in this state in a monitored or supervised practice of the applicant's occupation or profession before a decision is made by the division either to grant or deny the applicant a regular license.
- (2) The division may not issue a temporary license to a person who qualifies for one under Subsection (1)(a) more than three consecutive times within the three-year period immediately following the issuance of the first temporary license.
- (3) The division may not issue a temporary license to a person solely because there is a competitive advantage enjoyed or a competitive disadvantage suffered by any party caused by the absence of a licensed person, unless in addition there is or will be a material risk presented to the public health, safety, or welfare.

58-1-304. Restricted license.

- (1) The division may issue a restricted license to an applicant for licensure, renewal, or reinstatement of licensure if:

- (a) the applicant appears to meet the qualifications for licensure, but has engaged in unlawful, unprofessional, or other conduct bearing upon the applicant's qualifications; and
 - (b) the division determines the need to observe the applicant in a monitored or supervised practice of the applicant's occupation or profession or to attach other reasonable restrictions upon the applicant in order to accommodate licensure, while protecting the public health, safety, and welfare.
- (2) Issuance of a restricted license is considered a partial denial of licensure that is subject to agency review.

58-1-305. Inactive license.

- (1) The division may adopt rules permitting inactive licensure. The rules shall specify the requirements and procedures for placing a license on inactive status, the length of time a license may remain on inactive status, and the requirements and procedures to activate an inactive license.
- (2) Except as otherwise specified by rule, an inactive licensee has no right or privilege to engage in the practice of the licensed occupation or profession.

58-1-306. Surrender of license.

- (1) The division may, by written agreement, accept the voluntary surrender of a license.
- (2) Unless otherwise stated in the written agreement, tender and acceptance of a voluntary surrender of a license does not foreclose the division from pursuing additional disciplinary or other action authorized under this title or in rules adopted under this title.
- (3) Unless otherwise stated in the written agreement, tender and acceptance of a voluntary surrender of a license terminates all rights and privileges associated with the license.
- (4) Unless otherwise stated in the written agreement, the surrendered rights and privileges of licensure may be reacquired only by reapplying for licensure and meeting the requirements for a new or reinstated license set forth under this title or in rules adopted under this title.
- (5) Unless otherwise stated in the written agreement, documentation of tender and acceptance of a voluntary surrender of a license is a public record.
- (6) Unless otherwise stated in the written agreement, when a tender and acceptance of a voluntary surrender of a license occurs while adjudicative proceedings are pending against the licensee for unprofessional or unlawful conduct, the division may report the surrender of license to appropriate state and federal agencies and licensing data banks.

58-1-307. Exemptions from licensure.

- (1) Except as otherwise provided by statute or rule, the following persons may engage in the practice of their occupation or profession, subject to the stated circumstances and limitations, without being licensed under this title:
- (a) a person serving in the armed forces of the United States, the United States Public Health Service, the United States Department of Veterans Affairs, or other federal agencies while engaged in activities regulated under this chapter as a part of employment with that federal agency if the person holds a valid license to practice a regulated occupation or profession issued by any other state or jurisdiction recognized by the division;

- (b) a student engaged in activities constituting the practice of a regulated occupation or profession while in training in a recognized school approved by the division to the extent the activities are supervised by qualified faculty, staff, or designee and the activities are a defined part of the training program;
- (c) an individual engaged in an internship, residency, preceptorship, postceptorship, fellowship, apprenticeship, or on-the-job training program approved by the division while under the supervision of qualified persons;
- (d) an individual residing in another state and licensed to practice a regulated occupation or profession in that state, who is called in for a consultation by an individual licensed in this state, and the services provided are limited to that consultation;
- (e) an individual who is invited by a recognized school, association, society, or other body approved by the division to conduct a lecture, clinic, or demonstration of the practice of a regulated occupation or profession if the individual does not establish a place of business or regularly engage in the practice of the regulated occupation or profession in this state;
- (f) an individual licensed under the laws of this state, other than under this title, to practice or engage in an occupation or profession, while engaged in the lawful, professional, and competent practice of that occupation or profession;
- (g) an individual licensed in a health care profession in another state who performs that profession while attending to the immediate needs of a patient for a reasonable period during which the patient is being transported from outside of this state, into this state, or through this state;
- (h) an individual licensed in another state or country who is in this state temporarily to attend to the needs of an athletic team or group, except that the practitioner may only attend to the needs of the athletic team or group, including all individuals who travel with the team or group in any capacity except as a spectator;
- (i) an individual licensed and in good standing in another state, who is in this state:
 - (i) temporarily, under the invitation and control of a sponsoring entity;
 - (ii) for a reason associated with a special purpose event, based upon needs that may exceed the ability of this state to address through its licensees, as determined by the division; and
 - (iii) for a limited period of time not to exceed the duration of that event, together with any necessary preparatory and conclusionary periods. The requirements of Section 63A-10-105 do not apply to exemptions authorized by the division pursuant to this Subsection (1)(i);
- (j) an individual who:
 - (i) is certified as an athletic trainer by the National Athletic Trainers Association Board of Certification or another entity approved by the division;
 - (ii) is employed or officially associated with an educational institution, a professional sports organization, or a bona fide amateur sports organization; and
 - (iii) only provides athletic training services:
 - (A) to athletes of the educational institution or sports organization to which the individual is employed or officially associated;

- (B) at an official athletic training, practice, or competition site; and
 - (C) that are within the scope of the individual's certification; and
- (k) a law enforcement officer, as defined under Section 53-13-103, who:
 - (i) is operating a voice stress analyzer in the course of the officer's full-time employment with a federal, state, or local enforcement agency;
 - (ii) has completed the manufacturer's training course and is certified by the manufacturer to operate that voice stress analyzer; and
 - (iii) is operating the voice stress analyzer in accordance with Section 58-64-601, regarding deception detection instruments.
- (2) A practitioner temporarily in this state who is exempted from licensure under Subsection (1) shall comply with each requirement of the licensing jurisdiction from which the practitioner derives authority to practice. Violation of any limitation imposed by this section constitutes grounds for removal of exempt status, denial of license, or other disciplinary proceedings.
- (3) An individual who is licensed under a specific chapter of this title to practice or engage in an occupation or profession may engage in the lawful, professional, and competent practice of that occupation or profession without additional licensure under other chapters of this title, except as otherwise provided by this title.
- (4) Upon the declaration of a national, state, or local emergency, the division in collaboration with the board may suspend the requirements for permanent or temporary licensure of persons who are licensed in another state. Persons exempt under this subsection shall be exempt from licensure for the duration of the emergency while engaged in the scope of practice for which they are licensed in the other state.

58-1-308. Term of license - Expiration of license - Renewal of license - Reinstatement of license - Application procedures.

- (1) Each license issued under this title shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.
- (2) The expiration date of a license shall be shown on the license. A license that is not renewed prior to the expiration date shown on the license automatically expires.
 - (a) A license automatically expires prior to the expiration date shown on the license upon the death of a licensee who is a natural person, or upon the dissolution of a licensee that is a partnership, corporation, or other business entity.
 - (b) If the existence of a dissolved partnership, corporation, or other business entity is reinstated prior to the expiration date shown upon the entity's expired license issued by the division, the division shall, upon written application, reinstate the applicant's license, unless it finds that the applicant no longer meets the qualifications for licensure.
 - (c) Expiration of licensure is not an adjudicative proceeding under Title 63, Chapter 46b, Administrative Procedures Act.
- (3) (a) The division shall notify each licensee in accordance with procedures established by rule that the licensee's license is due for renewal and that unless an application for renewal is received by the division by the expiration date shown on the license, together with the appropriate

renewal fee and documentation showing completion of or compliance with renewal qualifications, the license will not be renewed.

- (b) Examples of renewal qualifications which by statute or rule the division may require the licensee to document completion of or compliance with include:
 - (i) continuing education;
 - (ii) continuing competency;
 - (iii) quality assurance;
 - (iv) utilization plan and protocol;
 - (v) financial responsibility;
 - (vi) certification renewal; and
 - (vii) calibration of equipment.
- (4) (a) An application for renewal that complies with Subsection (3) is complete. A renewed license shall be issued to applicants who submit a complete application, unless it is apparent to the division that the applicant no longer meets the qualifications for continued licensure.
- (b) The division may evaluate or verify documentation showing completion of or compliance with renewal requirements on an entire population or a random sample basis, and may be assisted by advisory peer committees. If necessary, the division may complete its evaluation or verification subsequent to renewal and, if appropriate, pursue action to suspend or revoke the license of a licensee who no longer meets the qualifications for continued licensure.
- (c) The application procedures specified in Section 58-1-301(2), apply to renewal applications to the extent they are not in conflict with this section.
- (5) Any license that is not renewed may be reinstated at any time within two years after nonrenewal upon submission of an application for reinstatement, payment of the renewal fee together with a reinstatement fee determined by the department under Section 63-38-3.2, and upon submission of documentation showing completion of or compliance with renewal qualifications. The application procedures specified in Subsection 58-1-301(2) apply to the reinstatement applications to the extent they are not in conflict with this section.
- (6) (a) If not reinstated within two years, the holder may obtain a license only if he meets requirements provided by the division by rule or by statute for a new license.
- (b) Each licensee under this title who has been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States may reinstate his license without taking an examination by submitting an application for reinstatement, paying the current annual renewal fee and the reinstatement fee, and submitting documentation showing completion of or compliance with any renewal qualifications at any time within six months after reestablishing domicile within Utah or terminating full-time government service.

58-1-309. Laws and rules examination.

In addition to qualifications for licensure or renewal of licensure enumerated in specific practice acts under this title, the division may by rule require an applicant to pass an examination of the laws and rules relevant to the occupation or profession to ensure familiarity with these laws and rules.

Part 4 - License Denial

58-1-401. Grounds for denial of license - Disciplinary proceedings - Time limitations - Sanctions.

- (1) The division shall refuse to issue a license to an applicant and shall refuse to renew or shall revoke, suspend, restrict, place on probation, or otherwise act upon the license of a licensee who does not meet the qualifications for licensure under this title.
- (2) The division may refuse to issue a license to an applicant and may refuse to renew or may revoke, suspend, restrict, place on probation, issue a public or private reprimand to, or otherwise act upon the license of any licensee in any of the following cases:
 - (a) the applicant or licensee has engaged in unprofessional conduct, as defined by statute or rule under this title;
 - (b) the applicant or licensee has engaged in unlawful conduct as defined by statute under this title;
 - (c) the applicant or licensee has been determined to be mentally incompetent for any reason by a court of competent jurisdiction; or
 - (d) the applicant or licensee is unable to practice the occupation or profession with reasonable skill and safety because of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material, or as a result of any other mental or physical condition, when the licensee's condition demonstrates a threat or potential threat to the public health, safety, or welfare.
- (3) Any licensee whose license to practice an occupation or profession regulated by this title has been suspended, revoked, or restricted may apply for reinstatement of the license at reasonable intervals and upon compliance with any conditions imposed upon the licensee by statute, rule, or terms of the license suspension, revocation, or restriction.
- (4) The division may issue cease and desist orders;
 - (a) to a licensee or applicant who may be disciplined under Subsection (1) or (2);
 - (b) to any person who engages in or represents himself to be engaged in an occupation or profession regulated under this title; and
 - (c) to any person who otherwise violates this title or any rules adopted under this title.
- (5)
 - (a) The division may not take disciplinary action against any person for unprofessional or unlawful conduct under this title, unless the division initiates an adjudicative proceeding regarding the conduct within four years after the conduct is reported to the division except under Subsection (5)(b).
 - (b) The division may not take disciplinary action against any person for unprofessional or unlawful conduct more than ten years after the occurrence of the conduct, unless the proceeding is in response to a civil or criminal judgment or settlement and the proceeding is initiated within one year following the judgment or settlement.

58-1-402. Administrative review - Special appeals boards.

- (1)
 - (a) Any applicant who has been denied a license to practice on the basis of credentials, character, or failure to pass a required examination, or who has been refused renewal or reinstatement of a license to practice on the basis that the applicant does not meet qualifications for continued licensure in any occupation or profession under the jurisdiction of the division may submit a request for agency review to

- the executive director within 30 days following notification of the denial of a license or refusal to renew or reinstate a license.
- (b) The executive director shall determine whether the circumstances for denying an application for an initial license or for renewal or reinstatement of a license would justify calling a special appeals board under Subsection (2). The executive director's decision is not subject to agency review.
- (2) A special appeals board shall consist of three members appointed by the executive director as follows:
 - (a) one member from the occupation or profession in question who is not on the board of that occupation or profession;
 - (b) one member from the general public who is neither an attorney nor a practitioner in an occupation or profession regulated by the division; and
 - (c) one member who is a resident lawyer currently licensed to practice law in this state who shall serve as chair of the special appeals board.
 - (3) The special appeals board shall comply with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, in its proceedings.
 - (4)
 - (a) Within a reasonable amount of time following the conclusion of a hearing before a special appeals board, the board shall enter an order based upon the record developed at the hearing. The order shall state whether a legal basis exists for denying the application for an initial license or for renewal or reinstatement of a license that is the subject of the appeal. The order is not subject to further agency review.
 - (b) The division or the applicant may obtain judicial review of the decision of the special appeals board in accordance with Sections 63-46b-14 and 63-46b-16.
 - (5)
 - (a) Members shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the members' official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.
 - (b) Members may decline to receive per diem and expenses for their service.
 - (6) If an applicant under Subsection (1) is not given a special appeals board, the applicant shall be given agency review under ordinary agency review procedures specified by rule.

58-1-403. Minimum 90-day suspension.

A license may not be reinstated subsequent to action taken under Section 58-1-401 within 90 days after the action has been taken, unless the division in collaboration with the appropriate board imposes other conditions.

58-1-404. Diversion - Procedure.

- (1) As used in this section, "diversion" means suspending action to discipline a licensee charged with certain offenses within the category of unprofessional conduct on the condition that the licensee agrees to participate in an educational or rehabilitation program or fulfill some other condition.
- (2)
 - (a) The director may establish, as circumstances require, a diversion advisory committee for each occupation or profession or similar group of occupations or professions licensed by the division. The committees shall assist the director in the administration of this section.
 - (b) Each committee shall consist of three or more licensees from the same or similar occupation or profession as the person whose conduct is the subject of the committee's consideration. The members of a diversion advisory committee shall be appointed by the director from nominations

submitted by the corresponding board established for the same or similar occupation or profession under Section 58-1-201 or from other qualified nominees developed by or submitted to the division. Committee members may not serve concurrently as members of the corresponding board. Committee members shall serve voluntarily without remuneration. The director may dissolve any diversion advisory committee, remove or request the replacement of any member of a committee, and establish any procedure that is necessary and proper for a committee's administration.

- (3) The director may, after consultation with the appropriate diversion advisory committee and by written agreement with the licensee, divert the licensee to a diversion program, at any time after receipt of a complaint, prior to notifying a licensee that formal disciplinary action for unprofessional conduct is being considered against the licensee, or prior to the conclusion of a hearing under Section 58-1-108.
- (4) The division shall define by rule the particular offenses with the category of unprofessional conduct which may be subject to diversion. A licensee may be eligible for a diversion program only once for the same or similar offense and is not eligible if previously disciplined by the division, by a licensing agency of another state, or by a federal government agency for the same or similar offense. Diversion programs may not be longer than five years. A decision by the director not to divert a licensee is not subject to appeal or judicial review.
- (5) A licensee may be represented by counsel during the negotiations for diversion, at the time of the execution of the diversion agreement, and at any hearing before the director relating to a diversion program.
- (6) Any diversion agreement entered into between the division and the licensee shall contain a full detailed statement of the requirements agreed to by the licensee and the reasons for diversion.
- (7) A diversion agreement may not be approved unless the licensee in the agreement knowingly and intelligently waives the right to a hearing under Section 58-1-108.
- (8) The director shall dismiss the charges against a licensee who has completed the requirements of his diversion agreement. The licensee may not thereafter be subject to disciplinary action for the conduct involved.
- (9) Diversion is not a determination that charges have been proven. If the charges are dismissed following diversion, the matter shall be treated as if the charge had never been filed, except the fact that a licensee has completed a diversion program and the terms and conditions of the diversion program may be considered by the division in determining appropriate disciplinary action to be taken in the event the licensee is charged in the future with the same or a similar offense. No reporting or release of information regarding the diversion program of an individual licensee or the fact that charges were filed may be made to anyone outside the division. The licensee may not be required to report to any person, agency, or corporation the fact that he has been subject to a diversion program if the licensee successfully complete the diversion program. Negotiations or hearings regarding diversion may not be subject to the requirements of Title 52, Chapter 4, Open and Public Meetings.
- (10) If, during the course of the diversion of a licensee, information is brought to the attention of the director that the licensee has violated the diversion agreement, and if it appears in the best interest of the public to proceed with the charges, the director after consultation with the diversion advisory committee, shall cause to be served on the licensee an order to show cause specifying the facts relied upon by the director to terminate diversion and which sets a time and place for a hearing to determine whether or not the licensee has violated the diversion agreement. If, after the hearing, the director finds that the licensee has failed to comply with any terms or

conditions of the diversion agreement, the director shall proceed with the charges against the licensee which resulted in the diversion agreement plus any additional charges of unprofessional conduct arising from a violation of the diversion agreement.

- (11) The administrative statute of limitations for taking disciplinary action described in Subsection 58-1-401(5) shall be tolled during a diversion program.

Part 5 - Unlawful/Unprofessional Conduct

58-1-501. Unlawful and unprofessional conduct.

- (1) "Unlawful conduct" means conduct, by any person, that is defined as unlawful under this title and includes:
- (a) practicing or engaging in, representing oneself to be practicing or engaging in, or attempting to practice or engage in any occupation or profession requiring licensure under this title if the person is:
 - (i) not licensed to do so or not exempted from licensure under this title; or
 - (ii) restricted from doing so by a suspended, revoked, restricted, temporary, probationary, or inactive license;
 - (b) impersonating another licensee or practicing an occupation or profession under a false or assumed name, except as permitted by law;
 - (c) knowingly employing any other person to practice or engage in or attempt to practice or engage in any occupation or profession licensed under this title if the employee is not licensed to do so under this title;
 - (d) knowingly permitting the person's authority to practice or engage in any occupation or profession licensed under this title to be used by another, except as permitted by law; or
 - (e) obtaining a passing score on a licensure examination, applying for or obtaining a license, or otherwise dealing with the division or a licensing board through the use of fraud, forgery, or intentional deception, misrepresentation, misstatement, or omission.
- (2) "Unprofessional conduct" means conduct, by a licensee or applicant, that is defined as unprofessional conduct under this title or under any rule adopted under this title and includes:
- (a) violating, or aiding or abetting any other person to violate, any statute, rule, or order regulating an occupation or profession under this title;
 - (b) violating, or aiding or abetting any other person to violate, any generally accepted professional or ethical standard applicable to an occupation or profession regulated under this title;
 - (c) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation with respect to a crime of moral turpitude or any other crime that, when considered with the functions and duties of the occupation or profession for which the license was issued or is to be issued, bears a reasonable relationship to the licensee's or applicant's ability to safely or competently practice the occupation or profession;
 - (d) engaging in conduct that results in disciplinary action, including reprimand, censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession if the conduct would, in this state, constitute grounds for denial of licensure or disciplinary proceedings under Section 58-1-401;

- (e) engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the ability of the licensee or applicant to safely engage in the occupation or profession;
- (f) practicing or attempting to practice an occupation or profession regulated under this title despite being physically or mentally unfit to do so;
- (g) practicing or attempting to practice an occupation or profession regulated under this title through gross incompetence, gross negligence, or a pattern of incompetency or negligence;
- (h) practicing or attempting to practice an occupation or profession requiring licensure under this title by any form of action or communication which is false, misleading, deceptive, or fraudulent;
- (i) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's competency, abilities, or education;
- (j) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's license;
- (k) verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice under this title or otherwise facilitated by the licensee's license; or
- (l) acting as a supervisor without meeting the qualification requirements for that position that are defined by statute or rule.

58-1-502. Unlawful conduct - Penalty.

Unless otherwise specified in this title, any person who violates the unlawful conduct provisions defined in this title is guilty of a class A misdemeanor.

58-1-503. Maximum civil penalty for violation of court order.

- (1) If any written order issued under this title or if an injunction or temporary restraining order issued by a court of competent jurisdiction relating to this title is violated, the court may impose a civil penalty of not more than \$2,000 for each day the written order, injunction, or temporary restraining order is violated, if the person in violation has received notice of the written order, injunction, or temporary restraining order.
- (2) All penalties ordered under this section shall be deposited into the General Fund.

58-1-504. Court-ordered discipline.

The division shall promptly withhold, suspend, restrict, or reinstate the use of a license issued under this title if so ordered by a court.

**DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING ACT**

**Title 58, Chapter 1
Utah Code Annotated 1953
As Amended by
Session Laws of Utah 2001
Issued April 30, 2001**